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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/903,033	07/10/2001	Jeffrey Boulter	85804-019501 (01-9774)	9894
32361 7590 01/16/2007 GREENBERG TRAUIG, LLP MET LIFE BUILDING 200 PARK AVENUE NEW YORK, NY 10166			EXAMINER DENNISON, JERRY B	
			ART UNIT	PAPER NUMBER
			2143	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/16/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

09/903,033

Applicant(s)

BOULTER ET AL.

Examiner

J. Bret Dennison

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 October 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 12/11/06
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This Action is in response to Application Number 09/903,033 received on 10/25/2006.
2. Claims 1-42 are presented for examination.
3. The prosecution of this case has been transferred to another Examiner. All corresponding communications should be directed to Examiner's contact information, provided below.

### ***Response to Arguments***

4. Applicant's arguments, see Applicant's Response, filed 10/25/2006, with respect to the 112 rejections have been fully considered and are persuasive. The 112 rejections from the previous Office Action has been withdrawn.
5. Applicant's arguments, see Applicant's Response, filed 10/25/2006, with respect to the rejection(s) of claim(s) 1-42 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of TuneTo.com as provided below.

### ***Claim Interpretation***

6. Claims 1-42 recite clauses including the language, "such that", "so that", "thereby", these clauses simply showing an outcome of their preceding limitations (i.e. "performing a limitation, such that something occurs"). Any language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a

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particular structure does not limit the scope of a claim or claim limitation. See MPEP 2106, section II, subsection C for specific examples.

### ***Information Disclosure Statement***

7. It should be noted that the applicant has submitted an exorbitant amount of prior art on numerous PTO-1449's which, on initial consideration, do not all appear to have relevancy or pertinence to the instant invention as claimed. The applicant is requested in response to this office action to point out which of these numerous prior art are pertinent or relevant to the patentability of the invention as claimed in this instant application. It should be noted that it would be advantageous to the applicant to provide a concise explanation of why each of the prior art is being submitted and how it is understood to be relevant. "Concise explanations are helpful to the Office, particularly where documents are lengthy and complex and applicant is aware of a section that is highly relevant to patentability or where a large number of documents are submitted and applicant is aware that one or more are highly relevant to patentability." (See MPEP 609 under subheading "A. CONTENT" and 37 CFR 1.98(b)(5)).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-42 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over TuneTo.com's Community-Based Internet Music Data Streaming System (see the following articles, cited herein, for detailed explanations of the TuneTo.com System:

Shands, Mark, "An Exclusive Interview with Michael Weiss, TuneTo.com", April 14, 2000

Bill Konig, "The College Music Journal names TuneTo.com, CMJ Website of the Week", 12 April 2000

Alvear, Jose, "Q&A with Tim Bratton, President of TuneTo.com", November 23, 1999

Mark Smotroff, "TuneTo.com Seals \$2.6 Million Series A Funding", January 18, 2000).

8. Regarding claims 1-42, TuneTo.com provides a metacasting server that provides a combination of streaming with temporary caching for the purpose of streaming music (Shands, page 3), in which users vote on their favorite artist and then the system goes a little bit further to help them find the perfect channel playing music they like, as well as exposes them to new music that they would probably like and filters out music that they wouldn't like, all based on the preferences of the user (Shands, page 2). TuneTo.com provides a broadcast feature called the Preset Manager, which allows listeners to actually educate their Receivers as to which type of music, and which artists they like or dislike. Registered visitors are asked to rank up to five favorite genres, and then rate their feelings toward certain artists within a music style on a five point scale from "dislike" to "one of my favorites" (Konig, page 1). Tuneto.com then delivers highly targeted and highly focused channels based on a community, thereby being much more targeted, more tuned in to users' likes and dislikes (Alvear, page 2-3). TuneTo.com

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creates these community-based channels by gathering user preference information and then presenting to the listener, choices about channels that they might want to listen to based upon matching their profiles against other member's profiles, and then once you are part of one of the communities, users are exposed to new music in addition to the favorite bands they already said they like (Alvear, page 3). Therefore, as more and more users join the communities and continuously provide "thumbs up" and "thumbs down" feedback (Shands, page 5), the more accurate the profiles will be in terms of music selection, and the more accurate the system will get as to providing the specific music selection (including favorites as well as new music based on their profiles).

TuneTo.com also is registered with the US Copyright office for digital transmission of music over the Internet in compliance with the Digital Millennium Copyright Act (Smotroff, page 2). The fact that TuneTo.com's music database is internet-based, there are no restrictions as to the location of the users. Therefore, it does not matter what country each member is located.

Therefore, the system of TuneTo.com disclosed a computer system and method for providing a data stream according to preferences of a community, comprising:

a server repeatedly receiving preferences of a first community having a plurality of members, said received preferences regarding data stream content of a first music-related database including songs and/or music videos (Alvear, page 3, Tuneto.com provides a server that provides community based channels);

said server repeatedly receiving preferences of a second community having a plurality of members, said second preferences regarding data stream content of said

music-related database (Alvear, page 3, Tuneto.com provides a server that provides community based channels. This inherently includes multiple community-based channels, thereby including multiple communities);

said server evaluating said second preferences of said second community to provide evaluated second preferences (Alvear, page 3, TuneTo.com creates these community-based channels by gathering user preference information and then presenting to the listener, choices about channels that they might want to listen to based upon matching their profiles against other member's profiles);

said server repeatedly determining said first community from said second community by means of said evaluated second preferences with members of said first community having at least one preference in common (Konig, page 1);

said server repeatedly determining characteristics solely of said first community members' preferences with regard to said data stream content to provide determined characteristics (Shands, page 5, As more and more users join the communities and continuously provide "thumbs up" and "thumbs down" feedback);

said server biasing an individual data stream of said music-related database according to said determined characteristics, so that said individual data stream is biased according to said determined characteristics and so that said individual data stream is biased for positive preferences of said first community and biased against negative preferences of said first community (Alvear, page 3); and

said server transmitting said individual data stream on a voluntary or selectable basis thereby allowing an individual to receive said individual data stream on a voluntary

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or selectable basis so that said individual data stream continually has more content than said first community likes and less content than said first community dislikes without resort to analysis of said data stream content, and so that both said first community and said determined characteristics are permitted to change over time according to, respectively, said preferences of said second community and said preferences of said first community (Alvear, page 3).

### ***Conclusion***

**Examiner's Note:** Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant.

Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

In the case of amending the claimed invention, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.



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Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Bret Dennison whose telephone number is (571) 272-3910. The examiner can normally be reached on M-F 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



J. B. D.  
Patent Examiner  
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JEFFREY PWU  
PRIMARY EXAMINER